

1915

TAXING AUTHORITY OF EACH SUBDIVISION :

1. TO PREPARE BUDGET FOR ENSUING FISCAL YEAR FOR SUBMISSION TO COUNTY BUDGET COMMISSION, SHOULD FURNISH REQUIRED DETAILED INFORMATION IN GOOD FAITH—SECTION 5625-21 G. C.
2. PROCEDURE WHEN INFORMATION REQUIRED BY SECTION 5625-21 G. C. IS NOT FURNISHED.
3. APPROPRIATIONS MADE FROM PARTICULAR FUND—SHOULD NOT EXCEED AMOUNT AVAILABLE AS SET FORTH IN COUNTY BUDGET COMMISSION'S OFFICIAL OR AMENDED CERTIFICATE OF ESTIMATED RESOURCES.
4. COUNTY AUDITOR AND COUNTY BUDGET COMMISSION—DUTY WHERE FIXING TAX RATES FOR SUBDIVISIONS TO TAKE INTO CONSIDERATION TAXES SHALL NOT BE LEVIED AT RATE GREATER THAN NECESSARY TO PROVIDE NECESSARY FUNDS.
5. "TAX BUDGET"—INTERPRETATION—SECTIONS 5625-22, 5625-23, 5625-26 G. C.

SYLLABUS :

1. The taxing authority of each subdivision in preparing its budget for the ensuing fiscal year under Section 5625-21, General Code, for submission to the county budget commission, should act in good faith in furnishing in detail the information called for by that section, including estimates of receipts, expenditures and unencumbered balances.
2. Procedure that may be followed by the county budget commission when information required by Section 5625-21, General Code, is not furnished by a taxing authority, discussed.
3. Appropriations made by the taxing authority of a subdivision from a particular fund should not exceed the amount available therefor, as set forth in the county budget commission's official or amended certificate of estimated resources.

4. The budget law contemplates that the taxing authority of a subdivision shall not levy taxes at a rate greater than is necessary to provide necessary funds for the subdivision during the ensuing fiscal year, and it is the duty of the county auditor and county budget commission to take this lack of authority into consideration when fixing tax rates for the respective subdivisions.

5. The term "tax budget" as used in Section 5625-26, General Code, refers to the budget which the taxing authority files annually with the County Auditor, and which the Auditor in turn lays before the Budget Commission, as required by Sections 5625-22 and 5625-23, General Code.

Columbus, Ohio, May 21, 1947

Hon. Frank T. Cullitan, Prosecuting Attorney, Cuyahoga County
Cleveland, Ohio

Dear Sir:

This will acknowledge receipt of your letter requesting my opinion on seven questions relating to the duties of county budget commissions, and to the authority of taxing subdivisions to levy taxes in certain cases, and to make expenditures in excess of the amount estimated to be expended in their official budgets. The questions submitted are the following:

"1. If the Budget Commission has knowledge at the time of fixing allowances or believes that the unencumbered balances as reported are erroneous or understated, is it the Budget Commission's duty to change such estimated understated balances?

2. When a taxing district reports a zero balance, (a) is it the duty of the Budget Commission to make further inquiry? (It is contrary to general experience that there should be a zero balance, yet there were approximately sixty such estimates last year.) (b) Is it the duty of the taxing district to supply such unencumbered balance on its request; and (c) what is the duty of the Budget Commission if such taxing district refuses to furnish a more accurate estimate upon the request of the Budget Commission?

3. Where a taxing district in its tax budget underestimates its probable receipts from other sources, such as inheritance or sales taxes, is it the right or duty of the Budget Commission to substitute its estimate for that of the taxing district?

4. May a taxing district levy a tax for any purpose when it reports an unencumbered balance in excess of the requested expenditures from such fund,—assuming that Budget Commission fixed allotments after January 1st?

5. If the Budget Commission is of the opinion that the property tax collection will exceed 100% or be less than such 100% levy and the taxing district has failed to show such modification in its estimates, is it the duty of the Budget Commission to correct the filed budget? (The County received about 115% of its tax levy last year, and the City of Cleveland approximately 109%, due largely to a forfeiture and foreclosure drive. Taxing districts invariably estimate a 100% collection, irrespective of possible or probable variations.)

6. Does a taxing district have authority to expend in the current fiscal year a sum greater than estimated to be expended in the official budget, having in mind that excess revenue from new sources, as well as the inclusion of unencumbered balances, would involve expenditures not contemplated at the public hearing as provided for under Section 5625-22, General Code?

7. General Code Section 5625-26 provides: 'Before the end of the year the taxing authority of each subdivision and other taxing unit shall revise its tax budget (appropriation budget?) so that the total contemplated expenditures from any fund during the ensuing fiscal year will not exceed the total appropriations that may be made from such fund, as determined by the Budget Commission in its certification; and such revised budget shall be the basis of the annual appropriation measure.'

Does this authorize the taxing district to revise its originally filed tax budget so as to show revised estimate of originally estimated receipts, or gross requirements, in gross or in particular? (In the quoted sentence cited, did the Legislature in using the term 'tax budget' not refer to the appropriation budget?)"

As you know, the duty of preparing and adopting tax budgets for the next ensuing fiscal year is imposed upon the taxing authorities of the respective subdivisions by Sections 5625-20, 5625-21 and 5625-22, General Code, and not upon the county budget commission.

The budget of each subdivision is made out on forms prescribed by the Bureau of Inspection and Supervision of Public Offices, and must, as required by Section 5625-21, present in detail a statement of the necessary current operating expenses and expenditures for the ensuing fiscal year, including the amount required for debt charges, estimates of receipts, estimates of unencumbered balances at the end of the current year, etc.

After the budgets have been adopted, it is required that they be submitted to the county auditor on or before July 20th, or at such later time as may be prescribed by the State Department of Taxation, and the county

auditor in turn is required by Section 5625-23, General Code, to submit them to the budget commission, together with such information as the budget commission may request, or the Department of Taxation may prescribe, and it is at this point that the duties of the county budget commission begin. In other words, it is provided in Section 5625-23 that after the county auditor has laid the budgets before the budget commission, "The budget commission shall examine such budgets and ascertain the total amount proposed to be raised in the county for the purposes of each subdivision and other taxing units therein."

In preparing tax budgets for the ensuing fiscal year for submission to the budget commission, I think it fair to say that the budget law contemplates that the respective taxing authorities shall do everything reasonably within their power to make fair and honest estimates of the necessary expenses and expenditures for the ensuing fiscal year, and also of the receipts and unencumbered balances, as called for in Section 5625-21, to the end that the objective of the budget law to keep tax rates and expenditures of the respective subdivisions within the limitations prescribed by law, may be accomplished.

In this connection I quote the following from Opinions of the Attorney General for 1937, page 1747:

"The budget law was adopted so as to make the system of taxation uniform throughout the county and also so as to set up the proper check upon the various taxing authorities. The budget commission is the county financial coordinating body for the revision and readjustment of estimates and generally to see that all necessary items for debt charges and current expenses are contained in the various budgets of the local taxing authorities and to see that the same are within the limitations imposed by the State Constitution. It, of course, is the intent of the budget law that no more and no less taxes be levied than necessary for the financial needs of the county and its subdivisions. The budget law outlines very definitely the procedure to be followed in making up the budgets for the various subdivisions and the levying of the necessary taxes within the constitutional limitations for the payment of the necessary operating expenses and debt charges of the various subdivisions."

The following quotation from the opinion of the court in the case of *City of Columbus v. Budget Commission of Franklin County*, 144 O. S., 437, at page 439, is also pertinent:

“By the terms of Sections 5625-23, 5625-24 and 5625-25, General Code, it is the duty of the budget commission to pass upon and adjust the budget of each taxing authority within the county to the end that the tax rate shall be kept within the limitations provided by law.”

One of the sections of the budget law, particularly applicable to the duties and procedure of the county budget commission in dealing with the budgets of the several subdivisions in the county, is Section 5625-24, General Code, which reads in part as follows:

“The budget commission shall so adjust the estimated amounts required from the general property tax for each fund, as shown by such budgets, as to bring the tax levies required therefor within the limitations specified in this act for such levies, but no levy shall be reduced below a minimum fixed by law. It shall have authority to revise and adjust the estimate of balances and receipts from all sources for each fund and shall determine the total appropriations that may be made therefrom. * * *”

In the performance of their duties under the present budget law, the following language used by the Supreme Court in the case of *State, ex rel. The City of Dayton v. Patterson, Pros. Atty., et al.*, 93 O. S., 25, is pertinent and equally applicable, although it was used with respect to a previous budget law:

“It is the positive duty of the budget commissioners, in adjusting the various amounts to be raised, to see that the total amount shall not exceed in any taxing district the sum authorized to be levied therein, to-wit, ten mills on each dollar of the tax valuation of the taxable property therein. In the discharge of this duty they are to reduce the estimates contained in any or all budgets by such amount or amounts as will bring the total of the taxing district within the limits provided by law.”

As already indicated, the budget commissions would not be in position to discharge their duties under the law if the taxing authorities of the subdivisions fail to file their budgets for the ensuing fiscal year, or if budgets submitted do not contain the detailed information required by law, or if misleading or false information be reported therein. In such cases the subdivisions involved, during the ensuing fiscal year, might find themselves without an operating budget, and in an embarrassing position. The case of *Warren County Library Association v. Parker, Aud.*, 23 O. O., 511, is peculiarly applicable at this point. In that case several

questions were submitted to the court for determination. The third, fourth and fifth questions were stated and answered by the court in its opinion as follows:

“Third: Does the Budget Commission have authority to consider, for the purpose of determining tax rates, any budgets filed with its clerk which are not complete or do not contain the information required by the Bureau of Inspection and Supervision of Public Offices?”

The purpose of the General Code sections concerned with the various political subdivisions’ budgets and their consideration by the Budget Commission requires of necessity that the commission be fully advised by such budgets of the past, present, and anticipated receipts and expenditures of the respective political subdivisions. * * *

This being the law, the Budget Commission has no authority to consider for the purpose of fixing tax rates for any political subdivision a budget filed with its clerk and submitted to it by him which is not complete and does not contain the information required by the form prepared and prescribed by the Bureau of Inspection and Supervision of Public Offices.

Fourth: If such an incomplete or defective budget is filed with the clerk of the Budget Commission, what action, if any, may or should the Budget Commission take upon same?

In answer to the fourth provision (question) of what action the Budget Commission should take when an incomplete or defective budget is submitted to it, the court is of the opinion that the Budget Commission should notify the political subdivision which has submitted such budget that it is defective and return it to such subdivision for completion and correction.

Fifth: If any political subdivision fails to file, prior to the time at which the budgets of the various political subdivisions in the county are being considered by the Budget Commission, a complete and correct budget as prescribed by the Bureau of Inspection and Supervision of Public Offices, does the Budget Commission have authority to fix a rate for the benefit of such subdivision?

As to the authority of the Budget Commission to fix a tax rate for the benefit and use of a political subdivision that either fails entirely to file a budget or files an incomplete or defective budget, not giving to the budget commission a true and correct picture of the finances of said subdivision in the manner prescribed by the Bureau of Inspection and Supervision of Public Offices, it is the opinion of the court that the budget commission has no authority under such circumstances to fix a tax rate for

that subdivision, and it is the duty of such Budget Commission under such circumstances to ignore that subdivision in fixing the tax rates for the year in question.

The above answers to the questions propounded and the above interpretations of the sections of the statute inquired of are given, not with a view to deprive any political subdivision of any taxes or to work any hardship upon it or its officers, but are intended only to clarify and plainly set out the duties and authority of both the persons responsible for the preparation of budgets and also of the Budget Commission whose duty is to fix the tax rates based upon the information given in the budgets submitted to it."

In view of the provisions of the budget law relating to the preparation and contents of budgets required to be submitted to the budget commission for its action, and also relating to the duties imposed upon the budget commission with respect thereto, it is my opinion that your questions Nos. 1, 2, 3 and 5 may be solved by adopting and applying the procedure outlined in the Warren county case, *supra*.

In case the taxing authority of any subdivision should be dissatisfied with any action of the budget commission with respect to its budget, ample provision is made in Section 5625-28, General Code, whereby an appeal may be made to the Board of Tax Appeals, and by taking advantage of that section any errors that may have been made by the commission with reference to the budget may be corrected. That section, so far as pertinent, reads as follows:

"The taxing authority of any subdivision which is dissatisfied with any action of the budget commission may, through its fiscal officer, appeal to the board of tax appeals within thirty days after the receipt by such subdivision of the official certificate or notice of such action of said budget commission, which board of tax appeals shall forthwith consider the matter or matters presented to the budget commission, and shall have power to modify any action of the budget commission with reference to the budget, the estimate of revenues and balances or the fixing of tax rates. The finding of the board of tax appeals shall be substituted for the findings of the budget commission, and shall be certified to the county auditor and the taxing authority of the subdivision affected as the action of such budget commission under this act."

Your question No. 6, it seems to me, finds its answer in Sections 5625-26 and 5625-27, General Code. The first section just referred to

provides that the budget commission shall furnish to the respective taxing authorities an "official certificate of estimated resources", and the other section provides that the commission shall also furnish an "amended official certificate", in case a subdivision collects revenue from a new source which is not included in the official certificate, or in cases where the actual balances and receipts in any fund exceed the certified estimate of the fiscal officer, therein provided for. This section then closes with the following provision with respect to the amount of expenditures that may be made during the fiscal year:

"The total of appropriations made at any time during the fiscal year from any fund shall not exceed the amount set forth as available for expenditure from such fund in the official certificate of estimated resources or any amendment thereof certified prior to the making of the appropriation or supplemental appropriation."

In your question No. 4 you inquire if a taxing district may levy a tax for a particular fund when it reports an unencumbered balance in excess of the required expenditures from such fund.

The budget law contemplates that the taxing authorities of the respective subdivisions shall not levy taxes for unnecessary purposes, and this policy is particularly disclosed in Section 5625-25, General Code, which provides that when the budget commission has completed its work it shall certify its action to the taxing authority of each subdivision and taxing unit, together with the county auditor's estimate of the rate of tax "necessary to be levied," and that each taxing authority by ordinance or resolution shall authorize the "necessary" tax levies, and certify them to the county auditor, etc. See also Opinions of the Attorney General for 1937 at page 1747, where it says:

"It, of course, is the intent of the budget law that no more and no less taxes be levied than necessary for the financial needs of the county and its subdivisions."

In Opinions of the Attorney General for 1935, page 285, it was held that the county budget commission and county auditor, in performing their duties under the budget law, should take into account the subdivision's lack of authority to levy taxes in an amount greater than necessary to produce the necessary funds. The second paragraph of the syllabus of that opinion reads as follows:

“The tax levying authority of a subdivision or other taxing unit is not authorized by law to levy taxes at a rate greater than is necessary to provide the necessary funds for the estimated needs of the subdivision or taxing unit during the ensuing fiscal year, and it is the duty of a county budget commission and a county auditor in performing their duties as prescribed by Sections 5625-24 and 5625-25, General Code, to take this lack of authority into consideration.”

In framing your seventh question you quoted the last sentence of Section 5625-26, General Code, and have inquired if the legislature, in using the term “tax budget” therein, did not intend to refer to the appropriation budget. The entire section reads as follows:

“The certification of the budget commission to the taxing authority of each subdivision or taxing unit as set forth in the preceding section shall show the various funds of such subdivision other than the funds to be created by transfer. There shall be set forth on the credit side of each fund the estimated unencumbered balances and receipts, and if a tax is to be levied for such fund, the estimated revenue to be derived therefrom, and the rate of the levy and what portion thereof is within and without the ten mill limitation, and on the debit side the total appropriations that may be made therefrom. There shall be attached thereto a summary which shall be known as the ‘official certificate of estimated resources,’ which shall state the total estimated resources of each fund of the subdivision other than funds to be created by transfer. Before the end of the year, the taxing authority of each subdivision and other taxing unit shall revise its tax budget so that the total contemplated expenditures from any fund during the ensuing fiscal year will not exceed the total appropriations that may be made from such fund, as determined by the budget commission in its certification; and such revised budget shall be the basis of the annual appropriation measure.”

In my opinion, the last sentence of the section should be considered in connection with the other portion of the section, and when so considered, the term “tax budget” refers, not to the appropriation measure, but to the budget which the taxing authority files with the county auditor on or before July 20, as required by Section 5625-22, and which the auditor lays before the budget commission as required by Section 5625-23. This conclusion is justified by the provision in Section 5625-26 that the total contemplated expenditures from any fund during the ensuing fiscal year shall not exceed

the total appropriation that may be made from such fund, "as determined by the budget commission in its certificate," and the further provision that "such revised budget shall be the basis of the annual appropriation measure." In other words, the annual appropriation measure, which is sometimes referred to as the appropriation budget, is based upon the tax budget after it has been revised in accordance with the budget commission's official certificate of estimated resources, and the amount that may be expended from each fund is not to exceed the amount fixed for that fund by the budget commission in its certificate.

Respectfully,

HUGH S. JENKINS,
Attorney General.